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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1147

Introduced by Assembly Members Bonilla, Gomez, and Holden
(Coauthor: Assembly Member Skinner)

February 22, 2013

An act to amend Section 460 of, and to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of, the Business and Professions Code, and to amend Section 51034 of the Government Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1147, as amended, Bonilla. Massage therapy.

Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council. Existing law specifies the requirements for the council to issue to an applicant a certificate as a massage practitioner or massage therapist. Existing law authorizes a

city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified. Existing law authorizes a city, county, or city and county to, among other things, adopt reasonable health and safety requirements, as specified, pertaining to those massage establishments or businesses, and to require an applicant for a business license to operate a massage business or establishment to fill out an application that requests relevant information, as specified.

This bill would reenact, revise, and recast these provisions to, among other things, ~~additionally provide to establish an interim board of directors to govern the council until September 1, 2015, and would provide for the appointment of a new board of directors consisting of 13 members, as specified, whose 4-year terms would begin on that date. The bill would authorize the board to establish fees reasonably related to the costs of providing services and performing its duties, not to exceed \$300. The bill would require the board to provide at least 90 days' advance notice prior to holding a meeting to vote upon a proposal to change the certification requirements or increase the certification fees, as specified, except as provided. The bill would also require the board to notify certificate holders of a board action that changes those requirements or increases those fees.~~

This bill would delete provisions for the registration of massage establishments and, instead, provide for the certification of massage establishment operators and sole provider massage establishment operators, as specified. The bill would discontinue the issuance of new massage practitioner certificates after January 1, 2015, except as provided, but would authorize the renewal of massage practitioner certificates issued prior to January 1, 2015. The bill would require that all certificates or registrations issued pursuant to these provisions be subject to renewal every 2 years, except as provided. The bill would require the board of directors of the council to adopt requirements for the continuing education of certificate holders, as specified, and would require the council to inspect and approve schools or continuing education providers.

The bill would authorize the council to deny an application for a certificate or registration, or to discipline a certificate holder or registered establishment holder for a violation of these provisions, as specified. The bill would require the board to exercise its denial or discipline authority by means of fair and reasonable procedures that,

among other things, provide the ~~applicant, applicant or certificate holder, or registered establishment holder~~ with notice and an opportunity to be heard, as specified. The bill would provide that unprofessional conduct in violation of these provisions includes, among other things, engaging in sexually suggestive advertising related to massage services and engaging in sexual activity while providing massage services for compensation.

The bill would, notwithstanding any other law, prohibit a city, county, or city and county from enacting an ordinance that conflicts with these provisions and would prohibit any conflicting ordinance that is in effect before the effective date of these provisions from being enforced against a certificate holder or registered establishment. However, the bill would authorize a city, county, or city and county to enact ordinances that require a certificate holder or registered establishment to, among other things, obtain a license, permit, or other authorization, as specified, and abide by reasonable health and safety requirements, as specified.

The bill would authorize a court to issue an injunction or to provide any other relief it deems appropriate for violations of these provisions, as specified. The bill would provide that the powers and duties of the council are subject to review by the appropriate committees of the Legislature and would require the council to provide a specified report to these committees on or before June 1, 2016.

The bill would provide that these provisions are issues of statewide concern, and therefore applicable statewide. The bill would also provide that its provisions ~~be~~ are severable.

The bill would repeal these provisions on January 1, 2017.

The bill would also make clarifying and conforming changes regarding local regulation of massage establishments or businesses.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) It is the intent of Legislature that this act
2 enable consumers and local governments to more easily identify
3 trained massage professionals, provide for the consistent and
4 statewide certification and oversight of massage professionals,
5 ensure that schools teaching massage provide a high level of
6 training and protection for students, assist local governments and
7 law enforcement in maintaining the highest standards of

1 performance by certificated professionals, ~~and~~ provide for a
2 self-funded nonprofit oversight body to certify massage
3 professionals, ~~register massage establishments~~, and ensure full
4 compliance with, and execution of, the requirements of this act.

5 *(b) It is the intent of the Legislature that broad control over*
6 *land use in regulating massage establishments be returned to local*
7 *governments so that they may manage those establishments in the*
8 *best interest of the individual community, and that the requirements*
9 *and practice of the profession of massage therapy remain a matter*
10 *of statewide concern, regulation, and oversight.*

11 *(c) It is further the intent of the Legislature that local*
12 *governments, law enforcement, nonprofit stakeholders, the massage*
13 *industry, and massage professionals work together going forward*
14 *to improve communication and share information to further*
15 *increase the value of statewide certification, and also to develop*
16 *a model ordinance reflecting best practices in massage regulation*
17 *for cities and counties to adopt that will respect local control,*
18 *patient privacy, and the dignity of the profession of massage*
19 *therapy.*

20 *SEC. 2. Section 460 of the Business and Professions Code is*
21 *amended to read:*

22 460. (a) No city or county shall prohibit a person or group of
23 persons, authorized by one of the ~~agencies~~ *boards* in the
24 Department of Consumer Affairs *or a regulatory body established*
25 *pursuant to this code* by a license, certificate, or other such means
26 to engage in a particular business, from engaging in that business,
27 occupation, or profession or any portion thereof.

28 (b) No city, county, or city and county shall prohibit a healing
29 arts professional licensed with the state under Division 2
30 (commencing with Section 500) from engaging in any act or
31 performing any procedure that falls within the professionally
32 recognized scope of practice of that licensee.

33 (1) This subdivision shall not be construed to prohibit the
34 enforcement of a local ordinance in effect prior to January 1, 2010,
35 related to any act or procedure that falls within the professionally
36 recognized scope of practice of a healing arts professional licensed
37 under Division 2 (commencing with Section 500).

38 (2) This subdivision shall not be construed to prevent a city,
39 county, or city and county from adopting or enforcing any local
40 ordinance governing zoning, business licensing, or reasonable

1 health and safety requirements for establishments or businesses
2 of a healing arts professional licensed under Division 2
3 (commencing with Section 500).

4 (c) Nothing in this section shall prohibit any city, county, or
5 city and county from levying a business license tax solely for
6 revenue purposes, nor any city or county from levying a license
7 tax solely for the purpose of covering the cost of regulation.

8 ~~SEC. 2.~~

9 *SEC. 3.* Chapter 10.5 (commencing with Section 4600) is added
10 to Division 2 of the Business and Professions Code, to read:

11
12 CHAPTER 10.5. MESSAGE THERAPY ACT
13

14 4600. This chapter shall be known and may be cited as the
15 Massage Therapy Act. Whenever a reference is made to the
16 Massage Therapy Act by any statute, it shall be construed to refer
17 to this chapter.

18 4601. As used in this chapter, the following terms shall have
19 the following meanings:

20 (a) "Approved school" or "approved massage school" means a
21 school approved by the council that meets minimum standards for
22 training and curriculum in massage and related subjects, that meets
23 any of the following requirements, and that has not been otherwise
24 disapproved by the council:

25 (1) Is approved by the Bureau for Private Postsecondary
26 Education.

27 (2) Is approved by the Department of Consumer Affairs.

28 (3) Is an institution accredited by the Accrediting Commission
29 for Senior Colleges and Universities or the Accrediting
30 Commission for Community and Junior Colleges of the Western
31 Association of Schools and Colleges and that is one of the
32 following:

33 (A) A public institution.

34 (B) An institution incorporated and lawfully operating as a
35 nonprofit public benefit corporation pursuant to Part 2
36 (commencing with Section 5110) of Division 2 of Title 1 of the
37 Corporations Code, and that is not managed by any entity for profit.

38 (C) A for-profit institution.

39 (D) An institution that does not meet all of the criteria in
40 subparagraph (B) that is incorporated and lawfully operating as a

1 nonprofit public benefit corporation pursuant to Part 2
2 (commencing with Section 5110) of Division 2 of Title 1 of the
3 Corporations Code, that has been in continuous operation since
4 April 15, 1997, and that is not managed by any entity for profit.

5 (4) Is a college or university of the state higher education system,
6 as defined in Section 100850 of the Education Code.

7 (5) Is a school requiring equal or greater training than what is
8 required pursuant to this chapter and is recognized by the
9 corresponding agency in another state or accredited by an agency
10 recognized by the United States Department of Education.

11 (b) "Certificate" means a valid certificate issued by the council
12 pursuant to this chapter.

13 (c) "Compensation" means a payment, loan, advance, donation,
14 contribution, deposit, or gift of money, or anything of value.

15 (d) "Council" means the California Massage Therapy Council
16 created pursuant to this chapter, which shall be a nonprofit
17 organization exempt from taxation under Section 501(c)(3) of Title
18 26 of the United States Code.

19 (e) "Massage" means the scientific manipulation of the soft
20 tissues. For purposes of this chapter, the terms "massage" and
21 "bodywork" shall have the same meaning.

22 (f) "Massage establishment" or "establishment" means a
23 ~~business, studio, facility, or other entity that provides massage for~~
24 ~~compensation on its premises.~~ *location where massage is*
25 *performed for compensation, excluding those locations where*
26 *massage is only provided on an out-call basis.*

27 (g) "Massage practitioner" means a person who is certified by
28 the council ~~under~~ *pursuant to* Section 4604.2 and who administers
29 massage for compensation.

30 (h) "Massage therapist" means a person who is certified by the
31 council under Section 4604 and who administers massage for
32 compensation.

33 (i) ~~"Registration" means a valid establishment registration issued~~
34 ~~by the council pursuant to this chapter.~~

35 (j) ~~"Registered massage establishment" or "registered~~
36 ~~establishment" means a massage establishment that is registered~~
37 ~~with the council pursuant to Section 4613 as employing or using~~
38 ~~only certificate holders to administer massage for compensation;~~
39 ~~and that is in good standing and otherwise in compliance with the~~
40 ~~requirements of this chapter.~~

~~(k)~~

(i) “Operator” means a person, whether owner or nonowner, who manages the day-to-day operations of a massage establishment and supervises two or more certificate holders in the administration of massage for compensation *meets the requirements of Section 4604.1*. An operator need not be an owner of the establishment *or a certified massage therapist or practitioner*.

~~(l) “Owner” means a person having any ownership interest in a massage establishment, including, but not limited to, an officer, director, manager, or partner of a corporation, a partnership, or any other business entity, formation, or relationship.~~

(j) “Sole provider” means a massage business where the owner owns 100 percent of the business, is the only person who provides massage services for compensation for that business pursuant to a valid and active certificate issued in accordance with this chapter, and has no other employees.

4602. (a) The California Massage Therapy Council, as defined in subdivision (d) of Section 4601, is hereby established and shall carry out the responsibilities and duties set forth in this chapter.

(b) The council may take any reasonable actions necessary to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, ~~the hiring of staff, entering into contracts, and developing policies and procedures to implement this chapter.~~

(c) The council may require background checks for all employees, contractors, volunteers, and board members as a condition of their employment, *formation of a contractual relationship*, or participation in council activities.

(d) The council shall issue a certificate to an individual applicant who satisfies the requirements of this chapter for that certificate, and shall issue a registration to a massage establishment that satisfies the requirements of this chapter.

(e) The council ~~shall~~ *is authorized to* determine ~~that whether~~ the information provided to the council in relation to the certification of an applicant or registration of an establishment is true and correct and meets the requirements of this chapter. If the council has any reason to question whether ~~or not~~ the information provided is true or correct or meets the requirements of this chapter, the council is authorized to make any investigation it deems

1 necessary to establish that the information received is accurate and
2 satisfies any criteria established by this chapter.

3 (f) ~~Until July~~ *September 1, 2015*, the council shall be governed
4 by a board of directors comprised of two representatives selected
5 by each professional society, association, or other entity, which
6 membership is comprised of massage therapists and that chooses
7 to participate in the council. To qualify, a professional society,
8 association, or other entity shall have a dues-paying membership
9 in California of at least 1,000 individuals for the last three years
10 and shall have bylaws that require its members to comply with a
11 code of ethics. The board of directors shall also include each of
12 the following persons:

13 (1) One member selected by each statewide association of
14 private postsecondary schools incorporated on or before January
15 1, 2010, which member schools have together had at least 1,000
16 graduates in each of the previous three years from massage therapy
17 programs that meet the approval standards set forth in subdivision
18 (a) of Section 4601, ~~except from those unless a~~ *qualifying*
19 ~~associations that choose~~ *association chooses* not to exercise this
20 right of selection.

21 (2) One member selected by the League of California Cities,
22 unless that entity chooses not to exercise this right of selection.

23 (3) One member selected by the California State Association
24 of Counties, unless that entity chooses not to exercise this right of
25 selection.

26 (4) One member selected by the Director of Consumer Affairs,
27 unless that entity chooses not to exercise this right of selection.

28 (5) One member appointed by the Office of the Chancellor of
29 the California Community Colleges, unless that entity chooses not
30 to exercise this right of selection. The person appointed, if any,
31 shall not be part of any massage therapy certificate or degree
32 program.

33 (6) The council's bylaws shall establish a process for appointing
34 other professional directors, as determined by the board.

35 (g) ~~On July~~ *At 12 p.m. Pacific Standard Time on September 1,*
36 *2015, the term of each member of the board of directors established*
37 *pursuant to subdivision (f) shall be dissolved terminate, and the*
38 *council terms of 13 new members of the board of directors who*
39 *shall instead be governed by a board of directors comprised of 11*
40 *members chosen in the following manner, shall begin:*

1 (1) One member shall be a representative of the League of
2 California Cities, unless that entity chooses not to exercise this
3 ~~right of selection to appoint.~~

4 (2) One member shall be a representative of the California Police
5 Chiefs Association, unless that entity chooses not to exercise this
6 ~~right of selection to appoint.~~

7 (3) One member shall be a representative of the California State
8 Association of Counties, unless that entity chooses not to exercise
9 ~~this right of selection to appoint.~~

10 (4) ~~One member shall be appointed to the board by the Senate~~
11 ~~Committee on Rules, who shall be a member of the public a~~
12 ~~representative of an antihuman trafficking organization to be~~
13 ~~determined by that entity unless that entity chooses not to exercise~~
14 ~~this right to appointment.~~

15 (5) ~~One member shall be appointed to the board by the Speaker~~
16 ~~of the Assembly, who shall be a member of the public Office of~~
17 ~~the Chancellor of the California Community Colleges, unless that~~
18 ~~office chooses not to exercise this right of appointment. The~~
19 ~~appointee shall not be participating in any massage therapy~~
20 ~~certificate or degree program.~~

21 ~~(6) Six members shall be appointed to the board by the~~
22 ~~Governor. One member shall represent the Department of~~
23 ~~Consumer Affairs, one member shall be a member of the public, and~~
24 ~~four members shall be representatives of the massage industry.~~

25 ~~(6) Two members shall be appointed by the Director of~~
26 ~~Consumer Affairs, one of whom shall be a public member and one~~
27 ~~of whom shall be a California-certified massage therapist or~~
28 ~~practitioner who has been practicing for at least three years, unless~~
29 ~~the director chooses not to exercise this right of appointment.~~

30 ~~(7) One member appointed by the California Association of~~
31 ~~Private Postsecondary Schools.~~

32 (8) ~~One representative shall be appointed by the American~~
33 ~~Massage Therapy Association, California Chapter, who shall be~~
34 ~~a California-certified massage therapist or massage practitioner~~
35 ~~who is a California resident and who has been practicing massage~~
36 ~~for at least three years.~~

37 (9) (A) ~~One representative, who shall be a certified massage~~
38 ~~therapist or a certified massage practitioner who is a California~~
39 ~~resident who has practiced massage for at least three years prior~~
40 ~~to the appointment, selected by a professional society, association,~~

1 *or other entity which membership is comprised of massage*
2 *therapist professionals, and that chooses to participate in the*
3 *council. To qualify, a professional society, association, or other*
4 *entity shall have a dues-paying membership in California of at*
5 *least 1,000 individuals, have been established since 2000, and*
6 *shall have bylaws that require its members to comply with a code*
7 *of ethics.*

8 *(B) If there is more than one professional society, association,*
9 *or other entity that meets the requirements of subparagraph (A),*
10 *the appointment shall rotate based on a four-year term between*
11 *each of the qualifying entities. The qualifying entity shall maintain*
12 *its appointment authority during the entirety of the four-year term*
13 *during which it holds the appointment authority. The order in*
14 *which a qualifying professional society, association, or other entity*
15 *has the authority to appoint shall be determined by alphabetical*
16 *order based on the full legal name of the entity as of January 1,*
17 *2014.*

18 *(10) The members appointed to the board in accordance with*
19 *paragraphs (1) to (9), inclusive, shall appoint three additional*
20 *members, at a duly held board meeting in accordance with the*
21 *board's bylaws. One of those appointees shall be an attorney*
22 *licensed by the State Bar of California, who has been practicing*
23 *law for at least three years and who at the time of appointment*
24 *represents a city in the state. One of those appointees shall*
25 *represent a massage business entity that has been operating in the*
26 *state for at least three years.*

27 *(h) Board member terms shall be for four years.*

28 *(i) The board of directors shall establish fees reasonably related*
29 *to the cost of providing services and carrying out its ongoing*
30 *responsibilities and duties. Initial and renewal fees for certificates*
31 *shall be in an amount sufficient to support the functions of the*
32 *council in the administration of this chapter, but in no event shall*
33 *exceed ~~two hundred fifty dollars (\$250)~~ three hundred dollars*
34 *(\$300). The renewal fee shall be reassessed biennially by the board.*

35 *(j) The meetings of the council shall be subject to the rules of*
36 *the Bagley-Keene Open Meeting Act (Article 9 (commencing with*
37 *Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of*
38 *the Government Code). The board may adopt additional policies*
39 *and procedures that provide greater transparency to certificate*

1 holders and the public than required by the Bagley-Keene Open
2 Meeting Act.

3 (k) Prior to holding a meeting to vote upon a proposal to change
4 the certification requirements or increase the certification fees,
5 the board shall provide at least 90 days' notice of the meeting,
6 including posting a notice on the council's Internet Web site, and
7 sending a notice either by regular mail or email to certificate
8 holders and affected applicants, in advance of the vote, unless at
9 least two-thirds of the board members concur that there is an active
10 threat to public safety and that voting at a meeting without prior
11 notice is required.

12 (l) If the board approves a change to the certification
13 requirements or an increase in the certification fees, the council
14 shall update all relevant areas of its Internet Web site and notify
15 all certificate holders and affected applicants by a notice sent
16 either by regular mail or email within 14 days of the board's
17 action.

18 4603. Protection of the public shall be the highest priority for
19 the council in exercising its certification, registration, ~~disciplinary~~,
20 ~~disciplinary authority~~, and other functions. Whenever the
21 protection of the public is inconsistent with other interests sought
22 to be promoted, the protection of the public shall be paramount.

23 4604. (a) In order to obtain certification as a massage therapist,
24 an applicant shall submit a written application and provide the
25 council with satisfactory evidence that he or she meets all of the
26 following requirements:

27 (1) The applicant is 18 years of age or older.

28 (2) The applicant has successfully completed the curricula in
29 massage and related subjects totaling a minimum of 500 hours, or
30 the credit unit equivalent, that incorporates appropriate school
31 assessment of student knowledge and skills.

32 (A) Of the 500 hours, a minimum of 100 hours of instruction
33 shall address anatomy and physiology, contraindications, health
34 and hygiene, and business and ethics.

35 (B) ~~Of All of the 500 hours, a minimum of 250 hours shall be~~
36 ~~from approved schools. The remaining 250 hours required may~~
37 ~~be secured either from approved schools or from a continuing~~
38 ~~education provider approved by the council.~~

39 (3) The applicant has passed a massage and bodywork
40 competency assessment examination that meets generally

1 recognized psychometric principles and ~~standards~~, *standards* and
2 that is approved by the council. The successful completion of this
3 examination may have been accomplished before the date the
4 council is authorized by this chapter to begin issuing certificates.

5 (4) The applicant has successfully passed a background
6 investigation pursuant to Section 4606, *and has not violated any*
7 *of the provisions of this chapter.*

8 (5) All fees required by the council have been paid.

9 (6) *The council may issue a certificate to an applicant who*
10 *meets the qualifications of this chapter if he or she holds a current*
11 *and valid registration, certification, or license from any other state*
12 *whose licensure requirements meet or exceed those defined within*
13 *this chapter. If an applicant has received education at a school*
14 *that is not approved by the council, the council shall have the*
15 *discretion to give credit for comparable academic work completed*
16 *by an applicant in a program outside of California.*

17 (b) A certificate issued pursuant to this chapter and any
18 identification card issued by the council shall be surrendered to
19 the council by any certificate holder whose certificate ~~has been~~ is
20 suspended or revoked.

21 4604.1. (a) In order to obtain certification as a massage
22 establishment operator, an applicant shall submit a written
23 application and provide the council with satisfactory evidence that
24 he or she meets all of the following requirements:

25 (1) The applicant is 18 years of age or older.

26 (2) The applicant has successfully completed *an educational*
27 *program approved by the council that includes curricula*
28 *determined to be relevant by the council related to* ~~massage~~
29 ~~management and related subjects totaling a minimum of public~~
30 *protection not to exceed 50 hours, or the credit unit equivalent,*
31 *that incorporates health and hygiene, and business and ethics*
32 *appropriate school assessment of student knowledge and skills.*
33 ~~The 50 required hours may shall be secured either from approved~~
34 ~~schools or from a continuing education one provider approved by~~
35 ~~the council to teach the educational program required by this~~
36 ~~paragraph. The council shall determine the relevant curricula and~~
37 ~~the total number of education hours, or credit unit equivalent, that~~
38 *shall be required for certification pursuant to this paragraph.*

1 (3) The applicant has successfully passed a background
2 investigation pursuant to Section 4606 *and has not violated any*
3 *provision of this chapter.*

4 (4) All fees required by the council have been paid.

5 (b) *A person certified pursuant to this chapter as a massage*
6 *therapist, massage practitioner, or conditionally certified as a*
7 *massage practitioner who holds a valid and active certification*
8 *and is also a sole provider shall be issued certification as a sole*
9 *provider massage establishment operator upon written request*
10 *and payment of all fees required by the council, without having to*
11 *meet the other requirements of paragraph (2) of subdivision (a).*
12 *The sole provider massage establishment operator certification*
13 *shall be valid only as long as the certificate holder meets the*
14 *definition of a sole provider set forth in subdivision (m) of Section*
15 *4601. The certificate shall terminate immediately, by operation of*
16 *law without further action, when the certificate holder no longer*
17 *meets the definition of a sole provider.*

18 ~~(b)~~

19 (c) A certificate issued pursuant to this chapter and any
20 identification card issued by the council shall be surrendered to
21 the council by any certificate holder whose certificate ~~has been~~ is
22 suspended or revoked.

23 ~~(e) An operator of a~~

24 (d) A massage establishment operator may be held responsible
25 and disciplined by the council for conduct by any employee,
26 independent contractor, or volunteer working on the premises of
27 the operator's establishment that violates any law or the policies
28 and procedures of the council, if the operator knew or should have
29 known of the conduct.

30 ~~(d)~~

31 (e) A certificate may be issued by the council pursuant to this
32 section on or after January 1, 2016.

33 4604.2. (a) The council shall not *accept applications to issue*
34 *any new certificates to practice as a certified massage practitioner*
35 *on or after January August 1, 2015.*

36 (b) Certificates to practice as a certified massage practitioner
37 ~~issued for applications accepted~~ prior to January 1, 2015, may be
38 ~~renewed, if the certificate holder continues to be qualified pursuant~~
39 ~~to this chapter and is not otherwise out of compliance with the~~

1 ~~requirements of this chapter~~ *renewed without any additional*
2 *educational requirements.*

3 (c) A massage practitioner certificate ~~issued prior to January 1,~~
4 ~~2015,~~ and any identification card issued by the council, shall be
5 surrendered to the council by any certificate holder whose
6 certificate ~~has been~~ *is* suspended or revoked.

7 4604.3. (a) A person who was issued a conditional certificate
8 to practice as a massage practitioner shall, within five years of
9 being issued the conditional certificate *by the council*, complete
10 *and report to the council the completion of*, at least 30 hours of
11 additional education per year from approved schools or from
12 *continuing education* providers approved by the council, *until he*
13 *or she has completed a total of at least 250 hours of education.*

14 (b) A conditional certificate *issued to any person pursuant to*
15 *this section* shall immediately be nullified, without need for further
16 action by the council, if proof of completion of the requirements
17 specified in subdivision (a) is not filed with the council within ~~five~~
18 ~~years of the issuance of the conditional certificate~~ *the time period*
19 *specified in subdivision (a).*

20 (c) Notwithstanding subdivision (a) of Section 4604.2, the
21 council shall issue a new certificate to practice as a massage
22 practitioner to a person that successfully completes the
23 requirements described in subdivision (a).

24 4605. ~~(a) Except as otherwise provided, a certification or~~
25 ~~registration~~ issued pursuant to this chapter shall be subject to
26 renewal every two years in the manner prescribed by the council.
27 A certificate ~~or registration~~ issued by the council shall expire after
28 two years unless renewed as prescribed. The council may provide
29 for the late renewal of a certificate or registration.

30 ~~(b) To the extent required by this chapter, a certificate holder~~
31 ~~seeking renewal shall submit proof satisfactory to the council that,~~
32 ~~during the preceding two years, he or she has completed the~~
33 ~~required number of continuing education hours in an approved~~
34 ~~form and from an approved provider, as determined by the council.~~

35 4606. (a) Prior to issuing a certificate ~~or a registration~~ to an
36 applicant, or designating a custodian of records, the council shall
37 require the applicant or the custodian of records candidate to submit
38 fingerprint images as directed by the council and in a form
39 consistent with the requirements of this section.

1 (b) The council shall submit the fingerprint images and related
2 information to the Department of Justice for the purpose of
3 obtaining information as to the existence and nature of a record of
4 state and federal level convictions and of state and federal level
5 arrests for which the Department of Justice establishes that the
6 applicant or candidate was released on bail or on his or her own
7 recognizance pending trial.

8 (c) Requests for federal level criminal offender record
9 information received by the Department of Justice pursuant to this
10 section shall be forwarded to the Federal Bureau of Investigation
11 by the Department of Justice. The Department of Justice shall
12 review the information returned from the Federal Bureau of
13 Investigation, and shall compile and disseminate a fitness
14 determination regarding the applicant or candidate to the council.
15 The Department of Justice shall provide information to the council
16 pursuant to subdivision (p) of Section 11105 of the Penal Code.

17 (d) The Department of Justice and the council ~~may~~ *shall* charge
18 a fee sufficient to cover the cost of processing the request for state
19 and federal level criminal offender record information.

20 (e) The council shall request subsequent arrest notification
21 service from the Department of Justice, as provided under Section
22 11105.2 of the Penal Code, for all applicants for certification or
23 registration, or custodian of records candidates for whom
24 fingerprint images and related information are submitted to conduct
25 a search for state and federal level criminal offender record
26 information.

27 (f) The council is authorized to receive arrest notifications and
28 other background material about applicants and certificate ~~and~~
29 ~~registration~~ holders from a city, county, or city and county.

30 ~~4607. (a) The council shall adopt requirements for the~~
31 ~~continuing education of certificate holders, to become effective~~
32 ~~on the date specified by the council. The requirements shall address~~
33 ~~the total number of hours required, acceptable forms of continuing~~
34 ~~education, approved providers of continuing education, and any~~
35 ~~other matters deemed necessary by the council. Continuing~~
36 ~~education requirements for certificate holders shall not exceed 30~~
37 ~~hours every two years.~~

38 ~~(b) The council shall perform random audits in order to ensure~~
39 ~~compliance with these requirements.~~

1 ~~(e) The administration of this section may be funded through~~
2 ~~renewal fees and continuing education provider fees, not to exceed~~
3 ~~the amounts necessary to cover the reasonable costs of~~
4 ~~administering this section.~~

5 ~~(d) This section shall become effective on January 1, 2016.~~

6 4608. In addition to the other requirements of this chapter, a
7 certificate holder shall:

8 (a) Display his or her original certificate wherever he or she
9 provides massage for compensation. A certificate holder shall have
10 his or her identification card in his or her possession while
11 providing massage services for compensation.

12 (b) Provide his or her full name and certificate number upon
13 the request of a member of the public, the council, or a member
14 of law enforcement, or a local government agency charged with
15 regulating massage or massage establishments, at the location
16 where he or she is providing massage services for compensation.

17 (c) Include the name under which he or she is certified and his
18 or her certificate number in any and all advertising of massage for
19 compensation.

20 (d) Notify the council within 30 days of any changes in the
21 certificate holder's home address or the address of any massage
22 establishment or other location where he or she ~~regularly practices~~
23 ~~massage provides massage for compensation, excluding those~~
24 ~~locations where massage is only provided on an out-call basis, or~~
25 ~~is employed as a massage establishment operator. A certificate~~
26 ~~holder also shall notify the council of his or her primary email~~
27 ~~address, if any, and notify the council within 30 days of a change~~
28 ~~of the primary email address.~~

29 4609. (a) It is a violation of this chapter for *an applicant or a*
30 *certificate holder to commit any of the following acts, the*
31 *commission of which is grounds for the council to deny an*
32 *application for a certificate or to impose discipline on a certificate*
33 *holder:*

34 (1) Unprofessional conduct, including, but not limited to, any
35 of the following:

36 (A) Engaging in sexually suggestive advertising related to
37 massage services.

38 (B) Engaging in any form of sexual activity on the premises of
39 a massage establishment where massage is provided for
40 compensation, excluding a residence.

1 (C) Engaging in sexual activity while providing massage
2 services for compensation.

3 (D) Practicing massage on a suspended ~~license~~, *certificate* or
4 practicing outside of the conditions of a restricted ~~license~~
5 *certificate*.

6 (E) *Providing massage of the genitals or anal region, or of*
7 *female breasts, for compensation without the written consent of*
8 *the person receiving the massage and supervision by a physician.*

9 (2) Procuring or attempting to procure a certificate by fraud,
10 material misrepresentation, or mistake.

11 (3) *Failing to fully disclose all information requested on the*
12 *application.*

13 ~~(3)~~

14 (4) Impersonating an applicant or acting as a proxy for an
15 applicant in any examination referred to in this chapter for the
16 issuance of a certificate.

17 ~~(4)~~

18 (5) Impersonating a certificate holder, or permitting or allowing
19 a noncertified person to use a certificate.

20 ~~(5)~~

21 (6) Violating or attempting to violate, directly or indirectly, or
22 assisting in or abetting the violation of, or conspiring to violate,
23 any provision of this chapter or any rule or bylaw adopted by the
24 council.

25 ~~(6)~~

26 (7) Committing any fraudulent, dishonest, or corrupt act that is
27 substantially related to the qualifications or duties of a certificate
28 holder.

29 ~~(7) Being the subject, while holding a valid certificate, of a~~
30 ~~denial~~

31 (8) *Denial* of licensure, revocation, suspension, restriction,
32 *citation*, or any other disciplinary action *against an applicant or*
33 *certificate holder* by another state or territory of the United States,
34 by any other government agency, or by another California health
35 care professional licensing board, ~~or having been the subject of~~
36 ~~such discipline before submitting an application without fully~~
37 ~~disclosing that fact to the council board~~. A certified copy of the
38 decision, order, ~~or~~ judgment, *or citation* shall be conclusive
39 evidence of these actions.

40 ~~(8)~~

(9) Being convicted of any felony, misdemeanor, infraction, or municipal code violation, or being held liable in an administrative or civil action for an act, that is substantially related to the qualifications, functions, or duties of a certificate holder while holding a valid certificate. A record of the conviction or other judgment *or liability* shall be conclusive evidence of the crime or liability.

~~(9) Having been convicted of crimes or held liable for acts described in paragraph (8) prior to submitting an application for certification and failing to fully disclose that fact to the council. A record of the conviction or other judgment shall be conclusive evidence of the crime or liability.~~

(10) *Dressing while engaged in the practice of massage for compensation in a manner that exposes the certificate holders breasts or genitals, is transparent or see-through, or that otherwise constitutes a violation of Section 314 of the Penal Code.*

~~(10)~~

(11) Committing any act punishable as a sexually related crime or being required to register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code), or being required to register as a sex offender in another state.

~~(11) Failing to pay fines or fees levied by a city, county, or city and county for violations pertaining to the practice of massage within 90 days of becoming due, unless a formal dispute process is pending, the certificate holder is in bankruptcy proceedings, or the fines or fees are otherwise waived by the council.~~

(b) The council may deny an application for a certificate ~~or registration~~ for the commission of any of the acts described in subdivision (a). The council may also discipline a certificate ~~holder~~ or ~~registered massage establishment holder~~, in any manner permitted by this chapter, for the commission of any of those acts by a certificate holder, or by an employee, contractor, or volunteer of a registered establishment while on the premises, if any owner or operator of the establishment knew or should have known of the acts ~~holder~~.

4610. (a) An applicant for a certificate ~~or registration~~ shall not be denied a certificate ~~or registration~~, and a certificate holder ~~or registered establishment~~ shall not be ~~disciplined~~, *disciplined* pursuant to this chapter except according to procedures satisfying

1 *that satisfy* the requirements of this section. Denial or discipline
2 *that is* not in accord with this section shall be void and without
3 effect.

4 (b) The council may discipline a certificate holder ~~or a registered~~
5 ~~establishment~~ by any, or a combination, of the following methods:

6 (1) Placing the certificate holder ~~or registered establishment~~ on
7 probation, which may include limitations or conditions on practice.

8 (2) Suspending the certificate ~~or registration~~ and the rights
9 conferred by this chapter on a certificate holder or registered
10 establishment for a period not to exceed one year.

11 (3) Suspending or staying the disciplinary order, or portions of
12 it, with or without conditions.

13 (4) Revoking the ~~certificate or registration~~. *certificate*.

14 (5) Taking other action as the council, as authorized by this
15 chapter ~~or its bylaws~~, *policies adopted by the board*, deems proper.

16 (c) The council may issue an initial certificate ~~or registration~~
17 on probation, with specific terms and conditions, to any applicant.

18 ~~(d) A registered establishment may be held accountable for the~~
19 ~~conduct of employees, independent contractors, and volunteers~~
20 ~~working on the premises of the establishment, including individuals~~
21 ~~not authorized to provide massage services for compensation, and~~
22 ~~may be disciplined by the council pursuant to this chapter, if any~~
23 ~~owner or operator of the registered establishment knew or should~~
24 ~~have known of the conduct.~~

25 (e)

26 (d) Any denial or discipline shall be decided upon and imposed
27 in good faith and in a fair and reasonable manner. Any procedure
28 that conforms to the requirements of subdivision (f) is fair and
29 reasonable, but a court may also find other procedures to be fair
30 and reasonable when the full circumstances of the denial or
31 discipline are considered.

32 (f)

33 (e) A procedure is fair and reasonable *if the procedures specified*
34 *in subdivision (f) or (g) are followed* or if all of the following
35 apply:

36 (1) Denial or discipline shall be based on a preponderance of
37 the evidence. In determining the basis for the denial or discipline,
38 the council may consider all written documents or statements as
39 evidence, but shall weigh the reliability of those documents or
40 statements.

1 (2) The provisions of the procedure are publically available on
2 the council's Internet Web site.

3 (3) The council provides 15 calendar days prior notice of the
4 denial or discipline and the reasons for the denial or discipline.

5 (4) The council provides an opportunity for the applicant,
6 certificate holder, ~~or registered establishment~~ to be heard, orally
7 or in writing, not less than five days before the effective date of
8 the denial or discipline, by a person or body authorized to decide
9 whether ~~or not~~ the proposed denial or discipline should go into
10 effect.

11 ~~(g)~~
12 (f) (1) Notwithstanding any other law, if the council receives
13 notice that a certificate holder has been arrested and charges have
14 been filed by the appropriate prosecuting agency against the
15 certificate holder alleging a violation of subdivision (b) of Section
16 647 of the Penal Code or any other offense described in paragraph
17 (10) of subdivision (a) of Section 4609, the council shall
18 immediately suspend, on an interim basis, the certificate of that
19 certificate holder, and take all of the following additional actions:

20 (A) Notify the certificate holder at the address last filed with
21 the council that the certificate has been suspended and the reason
22 for the suspension within ~~5~~ 10 business days.

23 ~~(B) Notify any establishment or employer, whether public or~~
24 ~~private, that the~~ *The council has in its records as employing shall*
25 *notify the clerk of the city, county, or city and county when the*
26 *certificate holder that the certificate has been is suspended pursuant*
27 *to this section within 5 10 business days of the decision to suspend.*

28 (2) Upon notice to the council that the charges described in
29 paragraph (1) have resulted in a conviction, the council ~~may~~ *shall*
30 permanently revoke the suspended permit. ~~However, the certificate~~
31 ~~shall remain suspended during any appeal of the conviction~~
32 *certificate. The council shall provide notice to the certificate holder,*
33 *at the address last filed with the council by a method providing*
34 *delivery confirmation, within 10 business days that it has evidence*
35 *of a valid record of conviction and that the certificate will be*
36 *revoked unless the certificate holder provides evidence within 15*
37 *days from the date of receiving the council's mailing of the notice*
38 *that the evidence of conviction is incorrect either invalid or that*
39 *the conviction information is under appeal otherwise erroneous.*

(3) Upon notice that the charges described in paragraph (1) have resulted in an acquittal or have been otherwise dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any establishment or employer that received notice pursuant to this section shall be notified of the reinstatement within ~~5~~ 10 business days.

~~(h)~~

(g) (1) Notwithstanding any other law, if the council determines that a certificate holder has committed an act punishable as a sexually related crime or a felony that is substantially related to the qualifications, functions, or duties of a certificate holder, the council may immediately suspend the certificate of that certificate holder. A determination to immediately suspend a certificate pursuant to this subdivision shall be based upon a preponderance of the evidence and the council shall also consider any available credible mitigating evidence before making a decision. Written statements by any person shall not be considered by the council when determining whether to immediately suspend a certificate unless made under penalty of perjury. If the council suspends a certificate in accordance with this subdivision, the council shall take all of the following additional actions:

(A) Notify the certificate holder *within 10 business days*, at the address last filed with the council, by a method providing delivery confirmation, that the certificate has been suspended, the reason for the suspension, and that the certificate holder has the right to request a hearing pursuant to paragraph ~~(3)~~ *within 5 business days* (2).

(B) Notify by ~~electronic mail~~ *email* or any other means consistent with the notice requirements of this chapter, any business or employer, whether public or private, that the council has in its records as employing or contracting with the certificate holder for massage services, and the California city, county, or city and county that has jurisdiction over that establishment or employer, that the certificate has been suspended within ~~5~~ 10 business days.

(2) A certificate holder whose certificate is suspended pursuant to this subdivision shall have the right to request, in writing, a hearing to challenge the factual basis for the suspension. If the holder of the suspended certificate requests a hearing on the suspension, the hearing shall be held within 30 calendar days after receipt of the request. A holder whose certificate is suspended

1 based on paragraph (1) shall be subject to revocation or other
2 discipline in accordance with subdivision (a).

3 (3) If the council determines, after a hearing conducted pursuant
4 to this subdivision, to lift the suspension, the certificate shall be
5 immediately reinstated and the certificate holder, any establishment
6 or employer, and the ~~California~~ city, county, or city and county
7 that has jurisdiction over that establishment or employer, that
8 received notice pursuant to this section shall be notified of the
9 reinstatement within ~~5~~ 10 business days.

10 ~~(i)~~

11 (h) Any notice required under this section may be given by any
12 method reasonably calculated to provide actual notice. Any notice
13 given by mail shall be given by first-class or certified mail sent to
14 the last address of the applicant, certificate holder, or registered
15 establishment shown on the council's records.

16 ~~(j)~~

17 (i) ~~An applicant, applicant or certificate holder, or registered~~
18 ~~establishment~~ may challenge a denial or discipline *decision* issued
19 pursuant to this section in a court of competent jurisdiction. Any
20 action challenging a denial or discipline, including any claim
21 alleging defective notice, shall be commenced within one year
22 after the *effective* date of the denial or discipline. If the action is
23 successful, the court may order any relief, including reinstatement,
24 that it finds equitable under the circumstances.

25 ~~(k)~~

26 (j) This section governs only the procedures for denial or
27 discipline *decision* and not the substantive grounds for the denial
28 or discipline. Denial or discipline based upon substantive grounds
29 that violates contractual or other rights of the applicant, certificate
30 holder, or registered establishment, or is otherwise unlawful, is
31 not made valid by compliance with this section.

32 4611. (a) It is an unfair business practice for a person to do
33 any of the following:

34 (1) To hold himself or herself out or to use the title of "certified
35 massage therapist," "certified massage practitioner," "*certified*
36 *operator*," or any other term, such as "licensed," "certified,"
37 ~~"registered,"~~ "CMT," or "CMP," *in any manner whatsoever* that
38 implies or suggests that the person is certified as a massage
39 therapist or ~~practitioner without meeting the requirements of~~
40 ~~Section 4604 or 4604.2~~ *massage establishment operator, unless*

1 *that person currently holds an active and valid certificate issued*
2 *by the council pursuant to this chapter.*

3 ~~(2) To hold his or her massage establishment out or to use the~~
4 ~~title of “registered massage establishment,” “certified massage~~
5 ~~establishment,” or any other term, such as “licensed,” “certified,”~~
6 ~~“registered,” or “RME,” that implies or suggests that the~~
7 ~~establishment is a registered massage establishment without~~
8 ~~meeting the requirements of Section 4613.~~

9 (3)

10 (2) To falsely state or advertise or put out any sign or card or
11 other device, or to falsely represent to the public through any print
12 or electronic media, that he or she or any other individual is
13 licensed, certified, or registered by a governmental agency as a
14 massage therapist ~~or or~~, massage practitioner, ~~or that an~~
15 ~~establishment is registered pursuant to this chapter~~ *massage*
16 *establishment operator.*

17 (b) In addition to any other available remedies, engaging in any
18 of the prohibited behaviors described in subdivision (a) constitutes
19 unfair competition under Section 17200.

20 4612. (a) Notwithstanding any other law, a city, county, or
21 city and county shall not enact an ordinance that conflicts with
22 this chapter, nor shall any ordinance enacted by a city, county, or
23 city and county *or enforce an ordinance* that is in effect before the
24 effective date of this chapter that conflicts with ~~this chapter be~~
25 ~~enforced against a certificate holder or registered massage~~
26 ~~establishment chapter.~~

27 (b) A city, county, or city and county ~~may shall not~~ enact an
28 ordinance ~~pursuant relating to Section 37101 of the Government~~
29 ~~Code that requires a certificate holder or registered massage~~
30 ~~establishment to:~~ *a certified massage therapist, certified massage*
31 *practitioner, or certified massage establishment operator that does*
32 *any of the following:*

33 ~~(1) Obtain a license, permit, or other authorization if the license,~~
34 ~~permit, or other authorization is required of any other individual~~
35 ~~or business providing other professional services as defined in~~
36 ~~subdivision (a) of Section 13401 of the Corporations Code.~~

37 ~~(2) (A) Abide by reasonable health and safety requirements~~
38 ~~including, but not limited to, external window transparency,~~
39 ~~cleanliness of massage rooms, towels, and linens, reasonable attire~~
40 ~~and personal hygiene of persons providing massage services, and~~

~~prohibitions against nonsecurity-related camera systems or other recording and display devices.~~

~~(B) An ordinance enacted pursuant to this subdivision shall not include any of the following:~~

~~(i) A~~

~~(1) Imposes a requirement that a certificate holder take or pass any test, medical examination, or background check, or demonstrate comply with educational experience requirements beyond what is required by this chapter.~~

~~(ii)~~

~~(2) A prohibition against locked doors in a registered massage establishment with two or more people working at the establishment.~~

~~(iii) A~~

~~(3) Imposes a requirement that a registered massage establishment provide additional restroom, shower, or other facilities an individual holding a certificate issued in accordance with this chapter obtain any other license, permit, certificate, or other authorization to provide massage for compensation.~~

~~(iv) A requirement that a registered massage establishment have massage room windows that interfere with the privacy of the clients of the establishment.~~

~~(3) Abide by hours of operation set forth in the ordinance.~~

~~(4) Pay charges imposed in accordance with paragraph (3) of subdivision (c) of Section 1 of Article XIII C of the California Constitution.~~

~~(5) Comply with any other requirement consistent with this chapter.~~

~~(e) A city, county, or city and county may adopt a local ordinance requiring a certificate holder or a registered massage establishment to comply with the following requirements as a condition of operation, although other requirements consistent with this chapter may additionally be imposed by ordinance:~~

~~(1) Submit an application for a business license to operate a massage establishment that requires information relevant to the practice of massage, including whether or not the establishment is registered or will exclusively employ or use certified massage professionals to perform massage services.~~

~~(2) Comply with reasonable investigations regarding information provided in the course of a business license application.~~

1 ~~(3) File copies or provide other evidence of the certificates held~~
2 ~~by the persons who are providing massage services at the~~
3 ~~establishment.~~

4 ~~(4) Maintain on its premises, for review by local authorities,~~
5 ~~evidence that demonstrates that all persons providing massage~~
6 ~~services are certified and that the establishment is duly registered~~
7 ~~with the council.~~

8 ~~(5) Permit duly authorized officials of a city, county, or city and~~
9 ~~county to conduct reasonable inspections, during regular business~~
10 ~~hours, to ensure compliance with this chapter, the local ordinance,~~
11 ~~or any other applicable requirements.~~

12 ~~(6) Notify the city, county, or city and county of any intention~~
13 ~~to rename, or to change the ownership of, a massage establishment,~~
14 ~~or to convey the establishment to another person.~~

15 ~~(7) Pay a business license tax applicable to all other individuals~~
16 ~~or businesses providing professional services, as defined in~~
17 ~~subdivision (a) of Section 13401 of the Corporations Code.~~

18 ~~(d) If a city, county, or city and county provides the council~~
19 ~~with evidence that a registered establishment has failed or is failing~~
20 ~~to exclusively employ or use certificate holders to perform massage~~
21 ~~services for compensation, and the council fails to make an official~~
22 ~~determination within 90 days of being providing with that evidence,~~
23 ~~then the city, county, or city and county may seek relief, including,~~
24 ~~but not limited to, a declaration that the massage establishment's~~
25 ~~registration is void pursuant to Section 4617.~~

26 ~~(4) Imposes a dress code requirement in excess of those already~~
27 ~~required of certificate holders pursuant to paragraph (9) of~~
28 ~~subdivision (a) of Section 4608.~~

29 ~~(5) Prohibits a certificate holder from performing massage for~~
30 ~~compensation on the gluteal muscles, prohibits specific massage~~
31 ~~techniques recognized by the board as legitimate, or imposes any~~
32 ~~other specific restriction on professional practice beyond those~~
33 ~~set forth in subparagraph (E) of paragraph (1) of subdivision (a)~~
34 ~~of Section 4608.~~

35 ~~(e)~~

36 ~~(c) Nothing in this chapter shall prevent a city, county, or city~~
37 ~~and county from licensing, regulating, prohibiting, or permitting~~
38 ~~an individual who provides massage for compensation without a~~
39 ~~valid certificate, or a massage establishment that is not registered~~
40 ~~with the council or does not otherwise exclusively utilize certificate~~

1 holders to provide massage for compensation, in any manner it
2 deems proper that is in accordance with the law: *certificate*.

3 4613. (a) An owner of a massage establishment wishing to
4 register with the council shall submit a written application in a
5 form provided by the council and provide the council with
6 satisfactory evidence of all of the following:

7 (1) All fees required by the council have been paid.

8 (2) All individuals providing massage for compensation and all
9 massage establishment operators are certified pursuant to this
10 chapter as of the date of the application.

11 (3) A declaration is made that all future individuals who will
12 massage for compensation and all massage establishment operators
13 will be certified pursuant to this chapter, until the establishment
14 notifies the council of its intention to cancel its registration or the
15 registration is not renewed.

16 (4) A complete list has been provided to the council identifying
17 each person who owns 5 percent or more of the massage
18 establishment, operates the massage establishment, or works at
19 the massage establishment in any capacity whatsoever. The list
20 shall include the full legal name, certification number, if any,
21 mailing address, residential address, and position at the
22 establishment of each individual, and any other information the
23 council may require.

24 (5) All owners who own 5 percent or more of the massage
25 establishment and all others working on the premises of the
26 massage establishment who are not certificate holders pursuant to
27 this chapter have submitted fingerprint images in a form consistent
28 with the requirements of Section 4606.

29 (b) The council shall determine that the information provided
30 to the council in relation to the registration of an establishment is
31 true and correct and meets the requirements of this section. An
32 applicant for a massage establishment registration shall have the
33 burden to prove that the massage establishment is in compliance
34 with all of the requirements of this section. If the council has any
35 reason to question whether or not the information provided is true,
36 correct, or meets the requirements of this chapter, the council is
37 authorized to investigate. The investigation may include conducting
38 oral interviews, inspecting the massage establishment's premises
39 during business hours without prior notice, and making any

1 investigation necessary to establish that the information received
2 is accurate and satisfies any criteria established by this chapter.

3 (e) ~~An establishment registration issued pursuant to this chapter~~
4 ~~shall be surrendered to the council if the registration has been~~
5 ~~suspended or revoked.~~

6 (d) ~~The council shall maintain a regularly updated list of~~
7 ~~registered establishments on its Internet Web site. The council~~
8 ~~shall, upon request, confirm the names and registration numbers~~
9 ~~of any certificate holder listed as working at the registered~~
10 ~~establishment to any law enforcement agency or any other~~
11 ~~representative of a local government agency with responsibility~~
12 ~~for regulating or administering a local ordinance relating to~~
13 ~~massage or massage establishments.~~

14 (e) ~~A registered establishment shall inform the council of any~~
15 ~~change in the owners, operators, or workers required to be listed~~
16 ~~in paragraphs (4) and (5) of subdivision (a) within 10 business~~
17 ~~days of the change. If the registered establishment fails to notify~~
18 ~~the council of a change in a timely manner, the council may~~
19 ~~suspend or revoke the establishment's registration.~~

20 (f) ~~Once an establishment registration has been issued, neither~~
21 ~~the location nor ownership of the establishment registration shall~~
22 ~~be transferred, except as follows:~~

23 (1) ~~An establishment registration may be transferred from one~~
24 ~~location to another if there is no change in ownership and only~~
25 ~~after approval by the council, following the receipt of a written~~
26 ~~application for business location change and payment of a fee, not~~
27 ~~to exceed the reasonable costs of administering this paragraph.~~

28 (2) ~~An establishment registration may be transferred from one~~
29 ~~business name to another if there is no change in ownership and~~
30 ~~only after approval by the council, following the receipt of a written~~
31 ~~application for business name change and payment of a fee, not~~
32 ~~to exceed the reasonable costs of administering this paragraph.~~

33 (g) ~~A registered massage establishment shall obtain, keep, and~~
34 ~~maintain for three years, records of the full legal name, address,~~
35 ~~and telephone number of all persons to which it provides massage~~
36 ~~services for compensation. Registered massage establishments~~
37 ~~shall not provide massage services for compensation to clients~~
38 ~~who fail to provide this information.~~

1 ~~(h) A registered massage establishment shall include its business~~
2 ~~name and registration number in all advertising and shall display~~
3 ~~the original registration at the place of business.~~

4 ~~(i) A registered massage establishment shall provide, upon~~
5 ~~request, the name and registration number of the registered massage~~
6 ~~establishment to a member of the public, the council, or a member~~
7 ~~of law enforcement, or a local government agency charged with~~
8 ~~regulating massage or massage establishments.~~

9 ~~(j) A registered massage establishment and its employees,~~
10 ~~contractors, and volunteers shall comply with all other applicable~~
11 ~~requirements of this chapter.~~

12 ~~(k) The council is authorized to adopt policies and procedures~~
13 ~~for the periodic inspection of registered massage establishments.~~

14 ~~(l) The council shall not accept a massage establishment~~
15 ~~registration application prior to September 1, 2015, and shall not~~
16 ~~issue a registration prior to December 1, 2015.~~

17 4614. (a) Upon the request of any law enforcement agency or
18 any other representative of a local government agency with
19 responsibility for regulating or administering a local ordinance
20 relating to massage or ~~massage establishments~~, the council shall
21 provide information concerning a ~~certificate holder or registered~~
22 ~~establishment holder~~, including, but not limited to, the current
23 status of the ~~certificate or registration~~, any history of disciplinary
24 actions taken against the ~~certificate holder or registered~~
25 ~~establishment~~, the home and work addresses of the ~~applicant,~~
26 ~~applicant or~~ certificate holder, ~~or establishment owner~~, and any
27 other information in the council's possession that is necessary to
28 verify facts relevant to administering the local ordinance.

29 (b) Upon the request of the council, any law enforcement agency
30 or any other representative of a local government agency with
31 responsibility for regulating or administering a local ordinance
32 relating to massage or massage establishments is authorized to
33 provide information to the council concerning an ~~applicant,~~
34 ~~applicant or~~ certificate holder, ~~or registered establishment,~~
35 including, but not limited to, the current status of any local
36 application or permit, any history of legal or administrative action
37 taken against the applicant, certificate holder, ~~or registered~~
38 ~~establishment~~, any information related to criminal activity or
39 unprofessional conduct allegedly engaged in by a certificate
40 applicant or certificate holder, including, but not limited to, police

1 reports and declarations of conduct, the home and work addresses
2 of the applicant, certificate holder, ~~or establishment owner~~, and
3 any other information in the possession of the law enforcement
4 agency or other local government agency that is necessary to verify
5 information or otherwise implement this chapter.

6 (c) The council shall accept information provided by any law
7 enforcement agency or any other representative of a local
8 government agency with responsibility for regulating or
9 administering a local ordinance relating to massage ~~or massage~~
10 ~~establishments~~ and review that information in a timely manner.

11 4615. (a) The council shall have the responsibility to determine
12 whether the school ~~or~~, continuing education provider, *or provider*
13 *of education for massage establishment operators* from which an
14 applicant has obtained the education required by this chapter meets
15 the requirements of this chapter.

16 (1) *If the council has any reason to question whether or not the*
17 *applicant received the education that is required by this chapter*
18 *from the school or schools that the applicant is claiming, the*
19 *council shall investigate the facts to determine that the applicant*
20 *received the required education prior to issuing a certificate.*

21 *For purposes of this section and any other provision of this*
22 *chapter that authorizes the council is to receive factual information*
23 *as a condition of taking any action, the council may authority to*
24 *conduct oral interviews of the applicant and others or conduct any*
25 *investigation deemed necessary to establish that the information*
26 *received is accurate and satisfies the criteria established by this*
27 *chapter.*

28 (b) The council may charge a reasonable fee for inspection or
29 approval *of schools, continuing education providers, and massage*
30 *establishment operator education providers*, provided the fees do
31 not exceed the reasonable cost of the inspection or approval
32 process.

33 (c) The council shall develop policies and procedures governing
34 the requirements and approval process *for schools, continuing*
35 *education providers, massage establishment operator education*
36 *providers, curriculum and programs for schools, continuing*
37 *education classes, and programs for massage establishment*
38 *operator education providers*, including provisions for acceptance
39 of accreditation from a recognized accreditation body or other
40 form of acceptance, ~~at the discretion of the council.~~

1 4616. The council shall be sued only in the county of its
2 principal office, which shall be in Sacramento, unless otherwise
3 designated by the council.

4 4617. The superior court of a county of competent jurisdiction
5 may, upon a petition by any person, issue an injunction or any
6 other relief the court deems appropriate for a violation of this
7 chapter by any person or establishment operating in that county
8 subject to the provisions of this chapter. An injunction proceeding
9 under this section shall be governed by Chapter 3 (commencing
10 with Section 525) of Title 7 of Part 2 of the Code of Civil
11 Procedure.

12 4618. ~~(a)~~ The Legislature finds and declares that due to
13 important health, safety, and welfare concerns that affect the entire
14 state, establishing a uniform standard of certification for massage
15 practitioners, massage therapists, and massage establishments
16 *establishment operators* upon which consumers may rely to identify
17 individuals who have achieved specified levels of education,
18 training, and skill is a matter of statewide concern and not a
19 municipal affair, as that term is used in Section 5 of Article XI of
20 the California Constitution. Therefore, this chapter shall apply to
21 all cities, *counties, and cities* and counties, including charter cities
22 and charter counties.

23 ~~(b) Notwithstanding any other law, this chapter shall supersede~~
24 ~~Chapter 6 (commencing with Section 51030) of Part 1 of Division~~
25 ~~1 of Title 5 of the Government Code.~~

26 4619. (a) This chapter shall be liberally construed to effectuate
27 its purposes.

28 ~~(b) If any provision of this chapter or the application of these~~
29 ~~provisions to any person or circumstance is held to be invalid, the~~
30 ~~invalidity shall not affect other provisions or applications of the~~
31 ~~chapter that can be given effect without the invalid provision or~~
32 ~~application, and to this end the provisions of this chapter are~~
33 ~~severable.~~

34 The

35 (b) The provisions of this chapter are severable. If any provision
36 of this chapter or its application is held invalid, that invalidity shall
37 not affect other provisions or applications that can be given effect
38 without the invalid provision or application.

39 (c) *If any provision of this chapter or the application of these*
40 *provisions to any person or circumstance is held to be invalid, the*

1 *invalidity shall not affect other provisions or applications of the*
2 *chapter that can be given effect without the invalid provision or*
3 *application, and to this end the provisions of this chapter are*
4 *severable.*

5 4620. (a) On or before June 1, 2016, *for the time period*
6 *beginning on January 1, 2015*, the council shall provide a report
7 to the appropriate policy committees of the Legislature that
8 includes all of the following:

9 (1) A feasibility study of licensure for the massage profession,
10 including a proposed scope of practice, *legitimate techniques of*
11 *massage*, and related statutory recommendations.

12 (2) The council's compensation guidelines and current salary
13 levels.

14 (3) Performance metrics, including, but not limited to:

15 (A) The annual number of denied certificate ~~and registration~~
16 applications, and a brief description of the grounds for each
17 decision.

18 (B) The annual number of suspended, revoked, or otherwise
19 disciplined certificates ~~and registrations~~, and a brief description
20 of the grounds for each decision.

21 (C) The number of certificates taken off suspension, and a brief
22 description of the grounds for each decision.

23 (D) The number of schools inspected, approved, and
24 disapproved, the number of schools that have had their approvals
25 suspended or revoked, and a brief description of the grounds for
26 each decision.

27 (E) The total number of complaints about certificate holders
28 and registered establishments received annually, including a
29 subtotal of complaints received from local law enforcement and
30 the action taken by the council as a result of those complaints.

31 (b) The council shall testify in person if requested by the
32 appropriate policy committees of the ~~Legislature on matters~~
33 ~~included in the report described in subdivision (a)~~ *Legislature*.

34 4621. (a) This chapter shall remain in effect only until January
35 1, 2017, and as of that date is repealed, unless a later enacted
36 statute, that is enacted before January 1, 2017, deletes or extends
37 that date.

38 (b) Notwithstanding any other law, the powers and duties of the
39 council shall be subject to review by the appropriate policy
40 committees of the Legislature.

1 *SEC. 4. Section 51034 of the Government Code is amended to*
2 *read:*

3 51034. (a) The Legislature in enacting this chapter recognizes
4 the existing power of a city or county to regulate a lawful massage
5 business pursuant to Section 37101, or pursuant to Section 16000
6 or 16100 of the Business and Professions Code, or under Section
7 7 of Article XI of the California Constitution. ~~Nothing~~

8 (b) *Nothing* contained in this chapter shall be a limitation on
9 that existing power or on the existing authority of a city to license
10 for revenue ~~purposes, nor shall anything contained~~ purposes.

11 (c) *Nothing* contained in this chapter shall authorize a city,
12 county, or city and county to ~~prohibit~~ a do any of the following:

13 (1) *Prohibit* a person of one sex from engaging in the massage
14 of a person of the other sex.

15 (2) *Define* a massage establishment as an adult entertainment
16 business, or otherwise regulate a massage establishment as adult
17 entertainment.

18 (3) *Require* a massage establishment to have windows or walls
19 that do not extend from the floor to ceiling, or have other internal
20 physical structures including, windows, that interfere with a client's
21 reasonable expectation of privacy.

22 (4) *Impose* client draping requirements that extend beyond the
23 covering of genitalia and female breasts, or otherwise mandate
24 that the client wear special clothing.

25 (5) *Prohibit* a massage establishment from locking its external
26 doors when there is only one individual working on the premises
27 and that individual is engaged in providing massage for
28 compensation to a client.

29 (6) *Require* a massage establishment to post any notice in an
30 area that may be viewed by clients that contains explicit language
31 describing sexual acts, mentions genitalia, or specific
32 contraception devices.